

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Krista Kano	Team: Team # 2	CCRB Case #: 201404142	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/29/2014 7:00 PM	Location of Incident: § 87(2)(b) and § 87(2)(b)	Precinct: 79	18 Mo. SOL 10/29/2015	EO SOL 10/29/2015	
Date/Time CV Reported Wed, 04/30/2014 8:44 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 04/30/2014 8:44 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Wernersbach	05629	939682	088 PCT
2. POM Daniel Roman	27610	948270	088 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Joseph Wernersbach	Abuse: Sgt. Joseph Wernersbach failed to supervise the stop of § 87(2)(b)	§ 87(2)(b)
B.POM Daniel Roman	Abuse: PO Daniel Roman stopped § 87(2)(b)	§ 87(2)(b)
C.POM Daniel Roman	Abuse: PO Daniel Roman frisked § 87(2)(b)	§ 87(2)(b)
D.POM Daniel Roman	Abuse: PO Daniel Roman searched § 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On April 30, 2014, § 87(2)(b) filed a complaint using the CCRB's Call Processing System (encl. 3A-3B).

On April 29, 2014 at 7 p.m., § 87(2)(b)'s son, § 87(2)(b) was walking to the bus stop on § 87(2)(b) and § 87(2)(b) in Brooklyn, when he was stopped. § 87(2)(b) was not issued a summons and was not arrested. The following allegations resulted:

- **Allegation A—Abuse of Authority: Sgt. Joseph Wernersbach failed to supervise the stop of § 87(2)(b)**
- **Allegation B—Abuse of Authority: PO Daniel Roman stopped § 87(2)(b)**
- **Allegation C—Abuse of Authority: PO Daniel Roman frisked § 87(2)(b)**
- **Allegation D—Abuse of Authority: PO Daniel Roman searched § 87(2)(b)**

§ 87(2)(g)

- § 87(2)(g), § 87(4-b)

§ 87(2)(b) rejected mediation.

Results of Investigation

Civilians Statements

Victim: § 87(2)(b)

- § 87(2)(b) is a 5'9" tall, 142-pound black man with black dread locks and brown eyes. He was § 87(2)(b) at the time of the incident.

CCRB Statement

On May 6, 2014, § 87(2)(b) was interviewed at the CCRB (encl. 3F).

On April 29, 2014 around 6 p.m., § 87(2)(b) was at the movie theater and realized that he had a \$50 bill belonging to his mother, § 87(2)(b). He went home to § 87(2)(b) in Brooklyn to drop off the money. When he was walking on § 87(2)(b) towards his home, he took the \$50 bill out of his inside right coat pocket, rolled it into a tube, and put it back in his inside left coat pocket. He dropped the bill into the front door mail slot and walked back to the B26 bus stop on § 87(2)(b) and § 87(2)(b).

At the time, § 87(2)(b) wore the black corduroy blazer he wore during the CCRB interview, baggy jeans with white paint on them, and a red, white and blue striped shirt. His school and state ID and his money were in his left inside coat pocket. He did not have a wallet or cell phone with him. There was nothing in his pants pockets. That day, he did not drink or consume any drugs. He was not smoking a cigarette.

When he reached the corner of § 87(2)(b) and § 87(2)(b) a marked NYPD car pulled up next to him. PO1, identified by the investigation as PO Daniel Roman and described as a 6'3" tall, chubby Hispanic man in his 30s to early 40s, who was growing a beard, was the passenger. PO Roman was dark-skinned but had a lighter complexion than § 87(2)(b). PO2, identified by the investigation as Sgt. Joseph Wernersbach and described as a 5'9" tall, average-built, bald white man who was about 36 years old, was the driver. Sgt. Wernersbach did not have facial hair, tattoos, or earrings. Both officers wore blue uniforms.

PO Roman exited the car and said excuse me, sir. § 87(2)(b)'s hands were at his side and were not in his pockets. He said yes, and PO Roman pointed at him and said, "You're not carrying anything, right?" § 87(2)(b) said he was not. PO Roman stood directly in front of § 87(2)(b) on the sidewalk, closer to the street. Sgt. Wernersbach got out of the car and stood next to § 87(2)(b). Sgt. Wernersbach stood with his hands in his pockets and did not say anything to § 87(2)(b).

PO Roman frisked § 87(2)(b)'s sides, down his legs, and pants pockets. PO Roman said, "If I check I won't find anything right?" § 87(2)(b) said no, sir. PO Roman asked if he was lying, and § 87(2)(b) responded that he was not. § 87(2)(b) walked up with her dog. § 87(2)(b) asked why the officer was searching him and Sgt. Wernersbach said it was because they saw him rolling something green. § 87(2)(b) did not protest the frisk or search.

PO Roman searched only § 87(2)(b)'s empty outside right jacket pocket. PO Roman asked for § 87(2)(b)'s ID. § 87(2)(b) retrieved his student ID from his left inside coat pocket and handed it to PO Roman. PO Roman asked a few more times for § 87(2)(b)'s ID, so § 87(2)(b) gave him his state ID which was in the same pocket. PO Roman looked at the ID and handed it back to § 87(2)(b). PO Roman did not write anything down. § 87(2)(b) was not looking at Sgt. Wernersbach and did not know if he wrote anything down.

PO Roman handed back § 87(2)(b)'s ID. Sgt. Wernersbach asked if they were ready to go. PO Roman said that they did not have anything. The officers returned to their car and § 87(2)(b) walked to a different bus stop.

Complainant/ Witness: § 87(2)(b)

- § 87(2)(b) is a 5'2" tall, 158-pound black woman with black and gray dread locks and brown eyes. She was § 87(2)(b) at the time of the incident.
- § 87(2)(b) § 87(2)(b).

CCRB Statement

On April 29, 2014, § 87(2)(b) provided a phone statement (encl. 3I). On May 6, 2014, § 87(2)(b) was interviewed at the CCRB (encl. 3M) § 87(2)(g) § 87(2)(b).

When § 87(2)(b) dropped off the money, § 87(2)(b) stopped him and they switched phones. [In her phone statement, § 87(2)(b) stated that § 87(2)(b) is autistic and suffers from dyslexia and a heart condition.] § 87(2)(b) walked her dog down § 87(2)(b) and took a left on § 87(2)(b) § 87(2)(b). As she walked closer to § 87(2)(b) and § 87(2)(b) she realized § 87(2)(b) was speaking to the police.

§ 87(2)(b) yelled across the street, “That’s mine. Why are you stopping him?” The officers did not respond. PO1, identified by the investigation as PO Roman and described as a 5’10” to 5’11” tall, husky black man in his 30s, stood in front of § 87(2)(b) [In her phone statement, § 87(2)(b) stated that PO Roman’s shield number was 2710.] PO2, identified by the investigation as Sgt. Joseph Wernersbach and described as a 5’10” to 5’11” tall, slim, white man in his 30s with blond or light red hair and an angular face, stood behind § 87(2)(b). § 87(2)(b) did not see Sgt. Wernersbach’s face clearly because he was turned away from her. [In her phone statement, § 87(2)(b) stated that Sgt. Wernersbach’s shield number was 5629.]

One of the officers had § 87(2)(b)’s ID. They stood near the corner store’s ice machine. The store has a surveillance camera that points toward the ice machine. § 87(2)(b) asked the officers what their probable cause was for stopping § 87(2)(b). PO Roman told § 87(2)(b) not to tell him how to do his job. § 87(2)(b) said that she needed to know why they were stopping her son. PO Roman said that they received a report that he was rolling something down the street. § 87(2)(b) said that § 87(2)(b) does not smoke cigarettes or do anything illegal. PO Roman asked for § 87(2)(b)’s name and § 87(2)(b) answered.

Sgt. Wernersbach said that he thought if they searched § 87(2)(b) that they would find marijuana. § 87(2)(b) told the officers that she smokes marijuana and that if they wanted to search someone who smoked marijuana they could search her. § 87(2)(b) had not smoked marijuana that day. Sgt. Wernersbach opened § 87(2)(b)’s jacket and PO Roman reached his hand inside § 87(2)(b)’s left inner coat pocket.

§ 87(2)(b) walked into the corner store to get a pen and did not see if the officers went into any other pockets. She was inside the store for about 45 seconds.

When § 87(2)(b) exited the store, both officers were sitting in the car and were about to close their doors. Their marked car was parked on § 87(2)(b) directly in front of where they had stopped § 87(2)(b). § 87(2)(b) recorded the officers’ badge numbers. The officers drove away. The interaction lasted 10-15 minutes. She did not see any other people on the street. § 87(2)(b) was not arrested and was not issued a summons.

Attempts to obtain video footage

On May 7, 2014, a search of Googlemaps showed the corner store’s phone number on its awning. The number was called but the number was not in service. There were no other businesses in the area. On May 8, 2014, a Lexis Nexis search was requested, but the results were negative.

NYPD Statements:

Subject Officer: SGT. JOSEPH WERNERSBACH

- *Sgt. Wernersbach is a 5'9" tall, 185-pound, bald white man with brown eyes. He was § 87(2)(b) old at the time of the incident.*
- *On April 29, 2014, Sgt. Wernersbach was the Conditions Sergeant from 5 a.m. to 1:57 p.m., and worked overtime until 10:57 p.m. During overtime, he was in an unmarked dark blue vehicle § 87(2)(b) with PO Daniel Roman.*

Memo book

Sgt. Wernersbach had no memo book entries regarding this incident. On his fly pages he noted that at 6:30 p.m., Sgt. Roman changed to his operator in RMP § 87(2)(b) and he noted there that at 7 p.m., one man was stopped by PO Roman on the corner of § 87(2)(b) and § 87(2)(b) (encl. 4A-4D).

CCRB Statement

On August 5, 2014, Sgt. Wernersbach was interviewed at the CCRB (encl. 4G).

On April 29, 2014 around 7 p.m., Sgt. Wernersbach drove with PO Roman down § 87(2)(b) At the corner of § 87(2)(b) PO Roman stated that he observed a man, identified by the investigation as § 87(2)(b) in possession of what he believed to be marijuana. Sgt. Wernersbach did not make any observations regarding § 87(2)(b) He did not observe § 87(2)(b) roll a dollar bill between his fingers into a tube. Sgt. Wernersbach agreed to stop § 87(2)(b)

PO Roman made a U-turn and both he and Sgt. Wernersbach exited the vehicle. PO Roman approached § 87(2)(b) who appeared calm and not agitated from his body language. Sgt. Wernersbach stood back seven to nine feet away to secure the area. He did not smell marijuana in the area. PO Roman spoke to § 87(2)(b) but Sgt. Wernersbach did not hear their conversation. It was not a busy corner, although the street is large. Sgt. Wernersbach did not see PO Roman make any physical contact with § 87(2)(b) He did not hear PO Roman request § 87(2)(b)'s ID and did not hear any conversation about § 87(2)(b) providing a student ID versus a state ID.

After about a minute, § 87(2)(b) exited a corner store and approached Sgt. Wernersbach. She asked why they had stopped her son and why they were searching him. Sgt. Wernersbach's back was to PO Roman and § 87(2)(b) He did not see PO Roman frisk or search § 87(2)(b) and Sgt. Wernersbach denied frisking and searching § 87(2)(b)

Sgt. Wernersbach explained that § 87(2)(b) was not in trouble. He spoke with § 87(2)(b) to calm her down and assure her that § 87(2)(b) was not in trouble. § 87(2)(b) stated that her son had a learning disability. The officers left.

PO Roman did not later tell Sgt. Wernersbach that he frisked or searched § 87(2)(b) Sgt. Wernersbach did not prepare a stop and frisk report for § 87(2)(b) and he did not instruct PO Roman to prepare one. In the interview, Sgt. Wernersbach's counsel, Sgt. Arthur Smarsch of the Sergeants' Benevolent Association, asked him, if a stop and frisk report needed to be prepared, would Sgt. Wernersbach assume that PO Roman prepared one, and Sgt. Wernersbach replied yes.

Subject Officer: PO DANIEL ROMAN

- *PO Roman is a 6' tall, 280-pound Hispanic man with brown hair and brown eyes. He was § 87(2)(b) old at the time of the incident.*
- *On April 29, 2014, PO Roman was assigned to Foot Post #4 and was in uniform from 2 p.m. to 10:35 p.m. At some point, he was in Sgt. Wernersbach's vehicle, but could not say when he entered the car, the type of car, or if anyone else was in the vehicle.*

Memo book

PO Roman had no memo book entries regarding § 87(2)(b). At 3:10 p.m., PO Roman issued a summons in front of § 87(2)(b). At 7:15 p.m., he issued a summons at § 87(2)(b) and § 87(2)(b) (encl. 4I-4J).

CCRB Statement

On August 20, 2014, PO Roman was interviewed at the CCRB (encl. 4N). § 87(2)(g)

While in an RMP at the intersection of § 87(2)(b) and § 87(2)(b) PO Roman observed § 87(2)(b) smoking a marijuana cigar. PO Roman's window was down and the smell was stronger as they passed § 87(2)(b). PO Roman told Sgt. Wernersbach that he observed § 87(2)(b) smoking a marijuana cigar and Sgt. Wernersbach agreed to stop § 87(2)(b). Sgt. Wernersbach did not say that he made the same observation. PO Roman and Sgt. Wernersbach made a U-turn and both officers exited the vehicle.

§ 87(2)(b) had not moved since PO Roman first observed him. He made no movements towards his pants pockets, where PO Roman observed large bulges, which he could not describe further. Sgt. Wernersbach was some distance away from PO Roman and § 87(2)(b) but PO Roman could not estimate how many feet away Sgt. Wernersbach stood. As PO Roman approached § 87(2)(b) the odor of marijuana became stronger. PO Roman saw that § 87(2)(b) was no longer holding the marijuana cigar. He did not see what § 87(2)(b) did with the marijuana cigar.

PO Roman immediately frisked § 87(2)(b)'s pants pockets for his safety. PO Roman felt that there were no hard objects, so he stopped frisking § 87(2)(b). He did not enter any of § 87(2)(b)'s pockets. He did not see Sgt. Wernersbach frisk or search § 87(2)(b) and did not see Sgt. Wernersbach make any physical contact with § 87(2)(b).

As PO Roman frisked § 87(2)(b) he asked § 87(2)(b) for his name and ID. § 87(2)(b) did not respond, and PO Roman realized that § 87(2)(b) was "not all there." PO Roman asked where the marijuana was and where § 87(2)(b) tossed it. § 87(2)(b) did not respond and just blankly stared at PO Roman. PO Roman looked around the area for the marijuana cigar but did not recover it. PO Roman did not go searching for the marijuana cigar because he did not want to leave § 87(2)(b) alone.

After about one to two minutes, § 87(2)(b) walked down § 87(2)(b) and yelled at the officers, asking why they stopped her son. PO Roman said that they stopped § 87(2)(b) because he saw him smoking a marijuana cigar. § 87(2)(b) said that her son was disabled and wasn't doing that. PO Roman said that he was smoking. Sgt. Wernersbach continued to talk to § 87(2)(b) but PO Roman did not hear their conversation because he was still asking for § 87(2)(b).

§ 87(2)(b)'s name and ID, neither of which he ever obtained. In total, PO Roman asked for § 87(2)(b)'s name three times and for his ID three times.

PO Roman told § 87(2)(b) that they would use their discretion and let § 87(2)(b) go. PO Roman did not prepare a stop and frisk report for § 87(2)(b). Sgt. Wernersbach did not instruct him to prepare a stop and frisk report.

NYPD Documents

No stop and frisk reports or events were generated for this incident (encl.5A).

Status of Civil Proceedings

- As of August 20, 2014, the inquiry for § 87(2)(b)'s and § 87(2)(b)'s notice of claim is pending.

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2C).
- § 87(2)(b) has filed the following CCRB complaints (encl. 2D):
 - § 87(2)(b) [redacted]

Subject Officers CCRB History

- Sgt. Wernersbach has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. 2A).
 - § 87(2)(g), § 87(4-b) [redacted]
[redacted]
- PO Roman has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. 2B)

Conclusion

Identification of Subject Officers

Sgt. Wernersbach and PO Roman acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: Sgt. Joseph Wernersbach failed to supervise the stop of

§ 87(2)(b)

Allegation B—Abuse of Authority: PO Daniel Roman stopped

Allegation C—Abuse of Authority: PO Daniel Roman frisked

Allegation D—Abuse of Authority: PO Daniel Roman searched

It is undisputed that PO Roman stopped § 87(2)(b) and that Sgt. Wernersbach agreed to the stop. It is also undisputed that PO Roman frisked § 87(2)(b)

§ 87(2)(b) stated that he walked home to § 87(2)(b) to drop off § 87(2)(b)'s money and that as he walked, he rolled the money into a tube. He dropped the money off at home and walked to the bus. At the corner of § 87(2)(b) and § 87(2)(b) he was stopped by PO Roman and Sgt. Wernersbach. § 87(2)(b) was not smoking a cigarette and had not consumed drugs.

§ 87(2)(b) had loose money, his school ID, and his state ID in his inside right coat pocket. He denied having keys or a cell phone. He had nothing in his pants pockets. As PO Roman approached him, § 87(2)(b)'s hands were at his sides and not in his pockets. PO Roman frisked § 87(2)(b)'s legs and his pants pockets. During the frisk, § 87(2)(b) approached them. § 87(2)(b) did not protest the frisk. PO Roman searched only his outside right jacket pocket, but there was nothing in that pocket. § 87(2)(b) retrieved his IDs from his left inner jacket pocket and handed it to PO Roman.

§ 87(2)(b) stated that when she approached Sgt. Wernersbach and PO Roman, she asked why they were stopping § 87(2)(b). PO Roman said that they received a report that § 87(2)(b) was rolling something down the street. § 87(2)(b) said that § 87(2)(b) does not smoke cigarettes nor does anything illegal. Sgt. Wernersbach said that he thought if they searched § 87(2)(b) that they would find marijuana. § 87(2)(b) told the officers that she smokes marijuana. She had not smoked marijuana that day.

§ 87(2)(b) saw Sgt. Wernersbach open § 87(2)(b)'s jacket and PO Roman reach his hand inside § 87(2)(b)'s left inner jacket pocket. At this point, § 87(2)(b) walked into the corner store to get a pen and saw no further search.

PO Roman stated that as he drove past § 87(2)(b) with his windows open, he smelled marijuana and observed § 87(2)(b) smoking a marijuana cigar. PO Roman told Sgt. Wernersbach what observed. Sgt. Wernersbach did not make the same observation. They made a U-turn and approached § 87(2)(b). By the time PO Roman approached § 87(2)(b), § 87(2)(b) no longer had the marijuana cigar. PO Roman looked around for the marijuana briefly but did not find it. He did not see § 87(2)(b) throw the marijuana. PO Roman did not look extensively for the marijuana because he did not want to leave § 87(2)(b) alone.

As PO Roman approached § 87(2)(b) he observed large bulges in his pants pockets. PO Roman could not describe the shape of the bulges. § 87(2)(b) did not make any movements towards his pockets. PO Roman immediately frisked § 87(2)(b)'s pockets for his safety. He did not feel any hard objects. He denied searching § 87(2)(b).

Sgt. Wernersbach confirmed that PO Roman said that he believed § 87(2)(b) was smoking marijuana. Sgt. Wernersbach did not observe § 87(2)(b) smoking marijuana. Sgt. Wernersbach agreed to stop § 87(2)(b). PO Roman approached § 87(2)(b) and Sgt. Wernersbach stood seven to nine feet away. He did not smell marijuana.

Sgt. Wernersbach denied seeing PO Roman frisk § 87(2)(b). He stated that when § 87(2)(b) approached him, she asked why they were searching § 87(2)(b) but Sgt. Wernersbach, who stood seven to nine feet away, denied seeing PO Roman search § 87(2)(b).

§ 87(2)(g)

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

An officer may perform a stop when he reasonably suspects that a person is engaged in criminal activity. An officer may frisk someone when he reasonably suspects that he is in physical danger by virtue of the detainee being armed. To perform a search, an officer must have probable cause that a person has committed a crime. People v. DeBour, 40. N.Y.2d 210 (encl.1A-1K).

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g), § 87(4-b) [Redacted]
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Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

